

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BRADLEY BLACKWELL,

Plaintiff,

v.

DAVID TSUI, et al.,

Defendants.

No. 2:21-cv-2207 KJM AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff has also filed an emergency motion for an investigation and sanctions and requested leave to file an amended complaint. ECF Nos. 6, 7.

Plaintiff has filed an in forma pauperis application that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 2. Accordingly, the request to proceed in forma pauperis will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1915(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915 (b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust

1 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court
2 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28
3 U.S.C. § 1915 (b)(2).

4 Plaintiff has also filed a motion requesting the court order a federal investigation and
5 sanction the Mule Creek State Prison law librarian and plaintiff's assigned counselor. ECF No. 6.
6 The court has no authority to order an investigation. With regard to the request for sanctions,
7 neither individual plaintiff seeks sanctions against is a party to this action, and the court generally
8 does not have jurisdiction over non-parties. See Zenith Radio Corp. v. Hazeltine Rsch., Inc., 395
9 U.S. 100, 112 (1969) (“a non-party with notice cannot be held in contempt until shown to be in
10 concert or participation.”). Furthermore, even if jurisdiction existed, plaintiff has failed to allege
11 or provide evidence of sanctionable conduct.¹

12 Finally, plaintiff's request for leave to amend will denied as unnecessary. The complaint
13 has not yet been screened by the court or served on the defendants, and plaintiff is therefore still
14 within the timeframe for amendment without the need for leave of court.² See Fed. R. Civ. P.
15 15(a)(1)(A).

16 In accordance with the above, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's motion for leave to proceed in forma pauperis, ECF No. 2, is GRANTED.
- 18 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
19 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915
20 (b)(1). All fees shall be collected and paid in accordance with this court's order to the Director of
21 the California Department of Corrections and Rehabilitation filed concurrently herewith.
- 22 3. Plaintiff's emergency motion and request for sanctions, ECF No. 6, is DENIED.

23

24 ¹ Plaintiff alleges that the law librarian returned his e-filed complaint through his assigned
25 counselor, rather than directly to plaintiff, and that his counselor told him he had to wait and see
26 him during office hours to have his complaint returned. He asserts that this conduct was possibly
27 for the purpose of notifying defendants of the complaint so that they could retaliate, but does not
28 allege any facts to support this assertion or that show he was retaliated against. ECF No. 6 at 1-2.

² Plaintiff is advised that if he does not file an amended complaint within forty-five days of the
service of this order, the court will assume that he is choosing to proceed on the original
complaint, which will then be screened in due course.

4. Plaintiff's motion for leave to amend, ECF No. 7, is DENIED as unnecessary.

5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form used in this district.

DATED: January 24, 2022

Allison Claire
ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE